(1) (3)

**IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH ATBILASPUR**

CANCELLED

**SECOND APPEAL NO.** 596 **/2004**

Single Bench

**APPELLANT**
**PLAINTIFF**

Dharam Singh Sahu
Aged abut 60 years S/o Shri Ram Shiveram Sahu Village Salihabhata P.C. No.10 R.I.Circle Patewa, The. & Distt. Mahasamund C.G.

P.R. No. 2678/04
Presented by Shri Vivek Rathore
dated 29-11-04

**VERSUS**

**RESPONDENTS**

1. ~~Sukhbai~~ sukhamBai Wd/o Sundar Lal Aged about 65 years R/o Village Salihabhata, P.,C.No.10, The. & District Mahasamund C.G.

2. Gomati Bai W/o Narsingh Sahu Aged about 43 years R/o village Turijha P.C.No. 121, Pot Tendukona Tah. & Distt.Mahasamund (C.G.)

3. Urmila Bai W/o Tikam Sahu Aged about 35 years R/o Village Barbaspur P.C.No. 125, R.I.Circle Khallari, The. & Distt. Mahasamund CG

4. Moti Bai W/o Hetu Sahu R/o Village Dhodhara P.C.No. 216 R.I.Circle, Pithora, The. & Distt. Mahasamund C.G.

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Appellant 1 to 4 are legal heirs of deceased Sunder Lal Sahu

(2) (4)

(The defendant No. 1 in Civil Suit & first appeal)

5. Heeralal S/o Sundar Lal aged about__Caste Soni R/o Village Talihabhata P.C.No.10 R.I. Circle Patewa, The. & District Mahasamund C.G.(Defendant No. 2 in Civil suit & first appeal)

6. State of Chhattisgarh
Through Collector, Mahasamund C.G.

**SECOND APPEAL UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE**

H.C.-22

(46)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक S.A.NO.558/04 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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**21.04.2006**

Shri Y.C. Sharma with Shri Vivek Rathore, counsel for appellant.

Shri Akhil Agrawal, Panel Lawyer for the respondent/State.

Heard on admission.

Appellant/plaintiff filed a suit for perpetual injunction, *inter alia* pleading that he is owner of the suit land bearing Khasra No.75 area 0.13 acres and is in possession of the same, but the defendants Sunderlal and Heeralal are attempting to dispossess him. The suit was opposed by defendants Sunderlal and Heeralaland counter claim for declaration of title and damages was filed by them *inter alia* on the ground that 2/3rd of the suit land is in possession of Sunderlal who is owner of it.

Both the parties in support of their respective cases led oral and documentary evidence. After due consideration of evidence learned Civil Judge, Class I, Mahasamund, held that the appellant/plaintiff is not in possession of the suit land. Per contra, held that Sunderlal got the share of Shyamdev i.e., 1/3rd share in the suit land and a part of the suit land is in his possession. The suit and counter claim both were dismissed by the trial Court vide judgment and decree dated 21/08/2001 passed in Civil Suit No.171-A/2000. Being aggrieved by the judgment and decree, plaintiff/appellant filed an appeal bearing Civil Appeal No.41-A/2002 against legal representatives of deceased Sunderlal who

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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died after the judgment and decree passed by the trial Court and other defendants.

Learned Ist Appellate Court appreciated the evidence and held that the whole of the suit land did not fall in the share of the appellant and appellant is not in possession over the whole suit land. Learned Ist Appellate Court after affirming the findings, judgment and decree of the trial Court dismissed the appeal.

Appellant in memo of appeal has proposed the following questions stating those to be substantial questions of law:-

*1) Whether the courts below justified by ignoring the provisions of Section 117 of Land Revenue Code, 1959 pertaining to the question of genuineness of Revenue Records*

*2) Whether the court below justified by ignoring the entries in the records of rights in favour of the plaintiffs with respect to disputed land, which was subsequently recognized by the Revenue Authorities during the settlement operation.*

*3) Whether the court below justified by ignoring the statutory presumption when there is no pleading or evidence on reversal of that presumption.*

*4) Whether the court below justified by*

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(48)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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*ignoring the factum of partition and separate possession despite this fact of partition was admitted (admitted facts need not be proved).*

*5) Whether the court below justified, by ignoring the fact that the Commissioner's report deals with the possession on the day of inspection, whereas the probe should have been about the length of the possession.*

*6) Whether the court below justified, in holding that the suit for perpetual injunction cannot be maintainable unless relief for recovery of, possession is also prayed, even in the case the plaintiff might be dispossessed during the pendency of the suit."*

According to pleadings of both the parties the question involved in the suit was whether as a result of partition in 1956-57 plaintiff was allotted the whole suit land or only 1/3rd of it and whether plaintiff was in possession over the whole of the suit land since then. Learned trial Court held that plaintiff failed to prove that he is owner and in possession over the suit land since 1956-57 and evaluating the evidence accepting the report Ex.D/3 held that the defendant Sunderlal is in possession over 0.08 hectare of the land whereas only 0.04 hectare of suit land is in possession of the plaintiff. First Appellate Court after close scrutiny of the evidence held that the partition took place 40 – 45 years ago and each of the three brothers received 1/3rd of the suit land in their

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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share. Learned First appellate Court also accepted that Shyamdev gave his share to Sunderlal and Sunderlal is in possession over 0.08 hectare of suit land whereas Dharamsingh is in possession over 0.04 hectare of suit land.

The conclusion arrived at by both the Courts below on fact is based on evidence available on record. Not only oral and documentary evidence is available, but on the order of the Court, Commissioner was also appointed to investigate, who after local investigation found that Sunderlal and Dharam Singh are in possession over the suit land bearing Khasra No.71. 0.08 hectare of land was found in possession of Sunderlal and 0.04 hectare of land was found in possession of Dharam Singh. The appreciation of evidence by both the Courts below is not the result of misreading of evidence or mis-application of law. I am of the opinion that no substantial question of law involves in this appeal. Therefore, the appeal is liable to be dismissed summarily and is accordingly dismissed.

**Sd/-**
**V.K.Shrivastava**
**Judge**

*Raju*